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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

THE NEW SIOUX CITY IRON COMPANY)

Petitioner,)

vs.)

TRAVERS TOOL CO., INC.)

Registrant.)

Cancellation No. _____

In the matter of:

Registration No. 2,501,198

Mark: TOOL SUPPLY DEPOT

Issued: October 30, 2001



03-01-2002

U.S. Patent & TMOtc/TM Mail Rpt Dt. #66

PETITION TO CANCEL

Assistant Commissioner for Trademarks
Box TTAB – Fee
2900 Crystal Drive
Arlington, VA 22202-3513

The New Sioux City Iron Company (hereinafter referred to as "Petitioner"), a corporation organized and existing under the laws of the State of Iowa, with its principal place of business at 310 S. Floyd Blvd., Sioux City, Iowa 51101, believes that it may be damaged by Registration No. 2,501,198 for the mark TOOL SUPPLY DEPOT and logo, for distributorships in the field of hand and power operated tools, featuring cutting tools, abrasives, measuring and inspection tools and accessories and shop supply products in International Class 35, registered October 30, 2001 by Travers Tool Co., Inc., a corporation of New York, with an address of 128-15 26th Avenue, Flushing, New York, 11354-0108 (hereinafter referred to as "Registrant").

As grounds for the Petition to Cancel, Petitioner states the following:

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1. Petitioner has requested registration under the provisions of the United States Trademark Act of 1946, as amended, of the mark THE TOOL DEPOT in International Class 35 for retail store services for tools, hardware, construction supplies and home improvement supplies.

2. Petitioner has used the mark THE TOOL DEPOT for retail store services for tools, hardware, construction supplies and home repairs and supplies.

3. At a point in time prior to any actual use by Registrant, or any constructive use date accorded it by reason of its application, and at a date at least as early as November 1997, Petitioner began use of THE TOOL DEPOT as a mark in interstate commerce for its above described retail store services.

4. Petitioner's mark THE TOOL DEPOT, by reason of long and prior continuous use, has come to be identified uniquely with Petitioner for its retail store services, and represents an important source identifier of Petitioner in connection with the sale of its services and products, and represents valuable goodwill of Petitioner in the marketplace.

5. Petitioner, on or about July 26, 1999, filed an application Serial No. 75/760,992 for the mark THE TOOL DEPOT for retail store services for tools, hardware, construction supplies and home improvement supplies in International Class 35. The Examiner has rejected Petitioner's application on the basis of The Trademark Act, Section 2(d) over the mark of Registrant as exemplified by Registration No. 2,501,198. Petitioner, acting through its attorney in prosecuting the application seeking to register Petitioner's mark, has been unable to successfully distinguish the Registrant's mark, and the Examiner has suspended Applicant's

application. Therefore, Applicant is filing this Petition and seeking continued suspension of the pending application pending resolution of this Petition.

6. Registrant's mark includes "tool" and "depot" as words as does Petitioner's application it's word mark, and as such those words form a dominant commercial impression; and because of the similarity of the words, sound and meaning between the registered mark and the mark of Petitioner, and on information and belief, the close similarity in relationship of the identified services and goods sold, Registrant's mark is likely to cause confusion, mistake or deception with Petitioner's mark for which an application is currently pending and under suspension. Said likelihood of confusion, mistake or deception will occur in interstate commerce, and the relevant public is likely to believe wrongfully that Registrant's goods emanate from Petitioner. Petitioner will also be denied its registration, and in that sense too will be damaged, unless the registration is cancelled.

7. By reason of the similarity of the marks and the similarity of the identified services and goods sold, that exists between Petitioner's application for registration and the Registrant's mark and goods, and by reason of the Examiner's rejection of Petitioner's application for registration of Petitioner's mark, even though Petitioner has prior use over Registrant, the continued existence of the registration will damage Petitioner under the provisions of Section 2(d) of The Trademark Act, 15 U.S.C. § 1052(d).

WHEREFORE, Petitioner requests that Registration No. 2,501,198 be cancelled, and that this Petition be sustained.

Accompanying the duplicate signed copies of this Petition to Cancel is the required filing fee of \$300. It is not believed that any additional fee is due; however, if such is required, please charge the same to Deposit Account No. 26-0084.

Respectfully submitted,

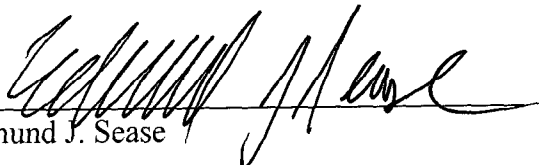


Edmund J. Sease, Reg. No. 24,741
McKEE, VOORHEES & SEASE, P.L.C.
801 Grand Avenue, Suite 3200
Des Moines, IA 50309-2721
Phone: (515) 288-3667
Fax: (515) 288-1338

Attorneys for Petitioner

CERTIFICATION UNDER 37 CFR 1.8(a)

I hereby certify that on the date shown below this correspondence is being deposited with the United States Postal Service in an envelope addressed to the Assistant Commissioner for Trademarks, Box TTAB - FEE, 2900 Crystal Drive, Arlington, VA 22202-3513, with sufficient postage, this 1st day of March, 2002.



Edmund J. Sease

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